



**BOULT • CUMMINGS  
CONNERS • BERRY<sub>PLC</sub>**

(615) 252-2363  
Fax: (615) 252-6363  
Email: hwalker@bccb.com

July 19, 2002

Honorable Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: Docket to Establish Generic Performance Measurements,  
Benchmarks and Enforcement Mechanisms for BellSouth  
Telecommunications, Inc.  
Docket No. 01-00193

Dear Chairman Kyle:

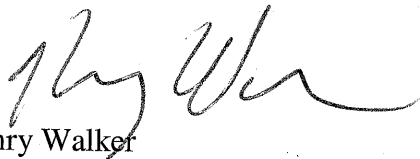
Please find enclosed the original and fourteen copies of the Response of CLEC Coalition to BellSouth's Second Motion to Reconsider in the above-captioned proceeding.

Copies have been provided to parties.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker

HW/nl  
Attachment  
c: Parties

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

Re: *Docket to Establish Generic Performance* )  
      *Measurements, Benchmarks and* ) Docket No. 01-00193  
      *Enforcement Mechanisms for BellSouth* )  
      *Telecommunications, Inc.* )

---

**RESPONSE OF CLEC COALITION TO BELL SOUTH'S SECOND  
MOTION TO RECONSIDER**

---

BellSouth Telecommunications, Inc. ("BellSouth") has filed a motion to reconsider the Order on Reconsideration issued by the Tennessee Regulatory Authority ("TRA") on June 28, 2002. The CLEC Coalition<sup>1</sup> submits the following response to that motion. In essence, BellSouth's pleading is an unauthorized and misleading attempt to persuade a new panel of TRA Directors to toss aside the result of more than two years of work by the agency. As explained more fully below, BellSouth's Motion should be summarily denied.

1. The motion is prohibited by the Tennessee Rules of Civil Procedure. Rule 59.01 expressly states that a party cannot file successive motions to reconsider. Once the Court (or in this case, the agency) has issued an order responding to one party's motion to reconsider, further motions to reconsider by that party "are not authorized." Otherwise, there would be no end to the litigation process.

---

<sup>1</sup> For purposes of this response, the Coalition members include Access Integrated Network, Inc.; Birch Telecom, Inc.; MCI WorldCom Communications, Inc., MCI metro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom"); AT&T Communications of the South Central States, LLC; and, DIECA Communications, Inc. d/b/a Covad Communications Company.

2. Even if the motion were proper, which it is not, Tennessee law holds that the purpose of a petition to rehear is to “call the attention of the court to matters overlooked, not to those things which counsel supposes were improperly decided after full reconsideration.”<sup>2</sup> The arguments raised by BellSouth, including the relevance and impact of the FCC’s recent decisions, have all been raised, some repeatedly, and addressed by the Authority in the Orders of May 14, 2002, and June 28, 2002.

3. Substantively, BellSouth’s motion is filled with inaccurate and misleading information about the TRA’s performance measures plan, its origin, and how it compares with plans adopted by other states.

#### **I. BellSouth’s Motion is Improper**

Under the Tennessee Rules of Civil Procedure (“T.R.C.P.”), motions to reconsider are called “motions to alter or amend the judgment.” *Savage v. Hildenbrandt*, 2001 WL 1013056 (Tenn. Ct. App., 2001).<sup>3</sup> Once a party has filed a motion to alter or amend a judgment and the

---

<sup>2</sup> *Wilson v. Tenn. Farmers Mutual Co.*, 411 S.W. 2d 694 (Tenn. Sup. Ct., 1967).

<sup>3</sup> The Court explained, “Accordingly, the appellate courts have repeatedly held that initial post-judgment motions called ‘motions to reconsider’ should be treated as the sort of relief available through motions to alter or amend.”

court rules on the motion, “[m]otions to reconsider” the ruling on the motion “are not authorized and will not operate to extend the time for appellate proceedings.” T.R.C.P. 59.01.

The only exception to this rule arises if the court grants a motion to alter or amend filed by another party. *Brenneman v. Brenneman*, 2001 WL 543434 (Tenn. Ct. App. 2001). For example, the CLEC Coalition, like BellSouth, also filed a Motion to Reconsider the Order of May 14, 2002, asking the agency to re-visit the issue of whether the CLECs should pay half the costs of an annual audit of the performance measures plan. The Authority denied the Coalition’s motion. Had the Authority agreed with the motion and, as the CLECs had requested, decided to make BellSouth pay the entire cost of the audits, then BellSouth could have properly filed a second motion to reconsider addressing that change in the Authority’s order.

That, of course, is not what has occurred here. BellSouth filed on May 19, 2002, a sixty-page Motion to Reconsider the Order of May 14, 2002. The TRA’s subsequent Order of June 28, 2002, granted, in part, and denied, in part, BellSouth’s requests. Under the rules of procedure, BellSouth is prohibited from filing a second motion to reconsider the June 28 Order on Reconsideration. The Motion should be summarily denied as improperly filed.<sup>4</sup>

The purpose of the rule against successive motions to reconsider is self-evident. Without such a prohibition, a disappointed party could simply continue filing motions in the

---

<sup>4</sup> Perhaps BellSouth itself is aware that there is no basis for the second motion. The company’s first motion, filed on May 29, 2002, correctly states that it is being filed “pursuant to T.C.A. § 4-5-317(a),” which is the section of the Uniform Procedures Act referring to motions to reconsider. BellSouth’s second, illegal motion contains no statutory reference authorizing the filing of the motion. This is because none exists.

hope that he will eventually find an argument that works or a judge who agrees. There would be no end to litigation and no finality for the parties.

BellSouth, one expects, is fully aware of this procedural rule (*see* footnote 2, *infra*) but has obviously decided to ignore the rules in the hope that a new panel of Directors can be persuaded to ignore the rules, too. Clearly, the rules require that the motion be denied.

## **II. BellSouth's Motion Raises No New Issues**

The purpose of a petition to reconsider is to point out matters that the agency may have overlooked or not fully considered, not to reargue issues which the agency has already addressed. *Wilson V. Tennessee Farmers Mutual Insurance, Supra.*, 411 S.W. 2d 699.

BellSouth's second motion does not even purport to raise any new issues. In fact, the second motion refers often to the same arguments made in the first motion to reconsider. (*See, e.g.*, p.9 and pp. 12-15 of the second motion.) Most of the motion is little more than BellSouth's reiteration of the reasons why Tennessee should adopt the Georgia performance measure plan instead of a Tennessee-specific plan. There is nothing new about these arguments. Ever since the Georgia Commission adopted its performance measures plan, BellSouth has been assiduously trying to sell the plan to every other commission in the region. Time after time, BellSouth has raised the same jurisdictional objections, arguing that no state has the power to force BellSouth to adopt a performance measures and enforcement plan without BellSouth's consent. But as the Coalition and the TRA have noted,<sup>5</sup> there are at

---

<sup>5</sup> See CLEC Response to BellSouth's [first] Motion to Reconsider, at p. 2. See the TRA Order in Docket 99-00430 (the DeltaCom Arbitration Order), August 11, 2000, at p. 12.

least three court decisions upholding the power of state commissions to adopt performance measures and enforcement mechanisms and apparently no court decisions holding otherwise.<sup>6</sup>

Similarly, BellSouth has previously complained about the “microscopic” nature of the Tennessee plan, (Motion for Reconsideration, at 2) the large number of measures (*id.*, at 2-3), the “draconian” penalties which might be assessed (*id.*, at 3), the “drastic” departure from the plans in other states (*id.*, at 18), and the preclusive impact of the FCC’s approval of the Georgia plan. *Id.*, at 2.

These and other issues have all been addressed by the Authority in the Orders of May 14 and June 28. Even if this were the first time that BellSouth had filed a motion to reconsider, there is nothing new in BellSouth’s motion and no basis for granting the motion under Tennessee law.

### **III. BellSouth’s Complaints about the Plan are based on Inaccurate and Misleading Statements**

The main thrust of the Motion to Reconsider is that the Tennessee plan is so radically different from any other plan in the BellSouth region that it must be flawed. The Motion, however, contains relatively few citations to any sources to support the company’s assertions of various “facts” about the Tennessee plan and the plans of other states. To assist the Authority’s review of BellSouth’s Motion, the Coalition has attempted to group BellSouth’s assertions and complaints into eight, separate issues, each of which is addressed below:

---

<sup>6</sup> For a more complete response to BellSouth’s jurisdictional arguments, see pages 1-5 of the CLEC response to BellSouth’s earlier Motion to Reconsider. For the convenience of the Authority, a copy of those pages is appended to this filing.

**ISSUE I: Tennessee Plan Is Dramatically Different From  
Any Of The State Ordered Plans Approved By The FCC.**

BellSouth is wrong and misleading in its assertions that the Tennessee Plan is dramatically different from the Georgia and Louisiana plans. First, the plans share many common characteristics as the following charts demonstrate. Second, the differences between Tennessee and the plans BellSouth prefers are the very reasons that the TRA's plan is superior and is better able to provide regulators an accurate overview of BellSouth's performance and to deter the company from discriminatory treatment of competitors. The chart below illustrates the differences and similarities between the Tennessee and Georgia plans.

ATTRIBUTE	GEORGIA REMEDY PLAN	TENNESSEE REMEDY PLAN
<b>Truncated Z</b>	<b>Yes</b>	<b>Yes</b>
<b>Parameter Delta Value</b>	<b>.35 for Tier 2 &amp; .50 for Tier 1</b>	<b>.25 for Tier I &amp; Tier II</b>
<b>Transaction-based</b>	<b>Yes</b>	<b>Yes</b>
<b>Tier II based on 3-month rolling average</b>	<b>Yes</b>	<b>Yes</b>
<b>Payment to Commission For Late, Incomplete, &amp; Inaccurate reporting</b>	<b>Yes</b>	<b>Yes</b>
<b>Remedy Measures</b> <b>(Remedy measures that are the same in both plans are in boldface type.)</b>	Average Response Time Interface Availability(PreOrdering/Ordering) Interface Availability(Main/Repair)  Loop Makeup Response-Manual Loop Makeup Response-Electronic Acknowledgement Message Timeliness Acknowledgement Completeness %Flow-through Reject Interval FOC Timeliness FOC/Reject Completeness  Percent Missed Installation Appointment  Average Completion Interval  Coordinated Customer Conversion(CCC)-Interval CCC-Hot Cut Timeliness Within Interval CCC-% Provisioning Troubles Within 7 Days %Provisioning Troubles Within 30 Days	Average Response Time Interface Availability(PreOrdering/Ordering) Interface Availability(M&R) Response Interval(M&R) Loop Makeup Response-Manual Loop Makeup Response-Electronic Acknowledgement Message Timeliness Acknowledgement Completeness %Flow-through Reject Interval FOC Timeliness FOC/Reject Completeness Service Inquiry With LSR FOC Response Time-Manual Speed Of Answer in Ordering Center Mean Held Order Interval & Distribution Intervals Average Jeopardy Notice Interval % of Orders Given Jeopardy Notices Percent Missed Installation Appointment % Completion/Attempts without Notice or < than 24 Hours Notice Average Completion Interval Average Completion Notice Interval Coordinated Customer Conversion(CCC)-Interval CCC-Hot Cut Timeliness Within Interval CCC-% Provisioning Troubles Within 7 Days



	of Service Cooperative Acceptance Testing-% xDSL Loops Tested  LNP-Average Time of Out of Service for LNP Conversions LNP-% of Time BellSouth Applies the 10-Digit Trigger Prior to the LNP Order Due Date Average Disconnect Timeliness(Non- Trigger)  LNP-% Missed Installation Appointments Invoice Accuracy Mean Time To Deliver Invoice Usage Data Delivery Accuracy  % Missed Repair Appointments Customer Trouble Report Rate Maintenance Average Duration %Percent Repeat Troubles Within 30Days  Trunk Group Performance  Avg Collocation % of Due Dates Missed	%Provisioning Troubles Within 30 Days of Service Cooperative Acceptance Testing-% xDSL Loops Tested % Timely Loop Modification/De- Conditioning on xDSL Loops Service Order Accuracy LNP-Average Time of Out of Service for LNP Conversions LNP-% of Time BellSouth Applies the 10-Digit Trigger Prior to the LNP Order Due Date  % of time the Old Service Provider Releases the Subscription Prior To The Expiration of the Second 9-Hour Timer LNP-% Missed Installation Appointment Invoice Accuracy Mean Time To Deliver Invoices Usage Daily Delivery Accuracy % Daily Usage Feed Errors Corrected in X Business Days % Billing Errors Corrected in X Days Recurring Charge Completeness Non-Recurring Charge Completeness % Missed Repair Appointments Customer Trouble Report Rate Maintenance Average Duration %Percent Repeat Troubles Within 30Days Out of Service > 24 Hours Average Answer Time-Repair Centers Trunk Group Performance Collocation-Avg Response Time Collocation-Avg Arrangement Time Avg Collocation % of Due Dates Missed Average Database Update Interval % Database Update Accuracy % NXXs & LRNs Loaded by LERG Effective Date
BellSouth Business Rules	Yes	Yes
SQM Measures (Measures that are in both	Average Response Time Interface Availability (Pre-Ordering/Ordering)	Average Response Time Interface Availability (Pre-Ordering/Ordering)

<p>plans are in boldface type.)</p>	<p>Availability(PreOrdering/Ordering)  Interface Availability(Main/Repair)  Response Interval(M&amp;R)  Loop Makeup Response-Manual  Loop Makeup Response-Electronic  Acknowledgement Message Timeliness  Acknowledgement Completeness  %Flow-through  % Rejected Service Request  Reject Interval  FOC Timeliness  FOC/Reject Completeness  Service Inquiry With LSR FOC  Response Time Manual  Speed Of Answer in Ordering Center  Mean Held Order Interval &amp;  Distribution Intervals  Average Jeopardy Notice Interval &amp;  % of Orders Given Jeopardy Notices  LNP-% Rejected Service Requests  LNP-Reject Interval  LNP-Total Service Order Cycle Time  Percent Missed Installation  Appointment  Average Completion Interval  Average Completion Notice Interval  % Completion/Attempts without Notice or  &lt; 24 Hours Notice  Coordinated Customer  Conversion(CCC)  CCC-Interval  CCC-Hot Cut Timeliness Within  Interval  CCC-Average Recovery Time  CCC-% Provisioning Troubles Within 7  Days  %Provisioning Troubles Within 30 Days  of Service  Cooperative Acceptance Testing-%  xDSL Loops Tested    Service Order Accuracy  LNP-Average Time of Out of Service for  LNP Conversions</p>	<p>Availability(PreOrdering/Ordering)  Interface Availability(M&amp;R)  Response Interval(M&amp;R)  Loop Makeup Response-Manual  Loop Makeup Response-Electronic  Acknowledgement Message Timeliness  Acknowledgement Completeness  %Flow-through  % Rejected Service Requests  Reject Interval  FOC Timeliness  FOC/Reject Completeness  Service Inquiry With LSR FOC  Response Time-Manual  Speed Of Answer in Ordering Center  Mean Held Order Interval &amp;  Distribution Intervals  Average Jeopardy Notice Interval  % of Orders Given Jeopardy Notices    Percent Missed Installation  Appointment  Average Completion Interval  Average Completion Notice Interval    Coordinated Customer  Conversion(CCC)  CCC-Interval  CCC-Hot Cut Timeliness Within  Interval  CCC-Average Recovery Time  CCC-% Provisioning Troubles Within 7  Days  %Provisioning Troubles Within 30 Days  of Service  Cooperative Acceptance Testing-%  xDSL Loops Tested  % Timely Loop Modification/De-  Conditioning on xDSL Loops  Service Order Accuracy  LNP-Average Time of Out of Service for  LNP Conversions</p>
-------------------------------------	---	---

	<p><b>LNP-% of Time BellSouth Applies the 10-Digit Trigger Prior to the LNP Order Due Date</b></p> <p>LNP-Average Disconnect Timeliness(Non-Trigger)</p> <p><b>LNP-% Missed Installation Appointments</b></p> <p><b>Invoice Accuracy</b></p> <p><b>Mean Time To Deliver Invoice</b></p> <p><b>Usage Data Delivery Accuracy</b></p> <p><b>Recurring Charge Completeness</b></p> <p><b>Non-Recurring Charge Completeness</b></p> <p><b>Usage Data Delivery Completeness</b></p> <p><b>Usage Data Delivery Timeliness</b></p> <p><b>Mean Time To Deliver Usage</b></p> <p><b>% Missed Repair Appointments</b></p> <p><b>Customer Trouble Report Rate</b></p> <p><b>Maintenance Average Duration</b></p> <p><b>%Percent Repeat Troubles Within 30Days</b></p> <p><b>Out of Service &gt; 24 Hours</b></p> <p><b>Average Answer Time-Repair Centers</b></p> <p><b>Mean Time To Notify CLEC Of Network Outages</b></p> <p><b>Avg Speed To Answer – Toll</b></p> <p><b>% Answered with “X” Seconds-Toll</b></p> <p><b>Avg Speed To Answer – DA</b></p> <p><b>% Answered With “X” Seconds - DA</b></p> <p><b>Trunk Group Performance</b></p> <p><b>Collocation-Avg Response Time</b></p> <p><b>Collocation-Avg Arrangement Time</b></p> <p><b>Avg Collocation % of Due Dates Missed</b></p> <p><b>Average Database Update Interval</b></p> <p><b>% Database Update Accuracy</b></p> <p><b>% NXXs &amp; LRNs Loaded by LERG Effective Date</b></p> <p><b>E911 Timeliness</b></p> <p><b>E911 Accuracy</b></p> <p><b>E911 Mean Interval</b></p> <p><b>Timeliness of Change Management Notices</b></p>	<p><b>LNP-% of Time BellSouth Applies the 10-Digit Trigger Prior to the LNP Order Due Date</b></p> <p>% of time the Old Service Provider Releases the Subscription Prior To The Expiration of the Second 9-Hour Timer</p> <p><b>LNP-% Missed Installation Appointment</b></p> <p><b>Invoice Accuracy</b></p> <p><b>Mean Time To Deliver Invoices</b></p> <p><b>Usage Daily Delivery Accuracy</b></p> <p><b>% Daily Usage Feed Errors Corrected in X Business Days</b></p> <p><b>% Billing Errors Corrected in X Days</b></p> <p><b>Recurring Charge Completeness</b></p> <p><b>Non-Recurring Charge Completeness</b></p> <p><b>Usage Data Delivery Completeness</b></p> <p><b>Usage Data Delivery Timeliness</b></p> <p><b>Mean Time To Deliver Usage</b></p> <p><b>% Missed Repair Appointments</b></p> <p><b>Customer Trouble Report Rate</b></p> <p><b>Maintenance Average Duration</b></p> <p><b>%Percent Repeat Troubles Within 30Days</b></p> <p><b>Out of Service &gt; 24 Hours</b></p> <p><b>Average Answer Time-Repair Centers</b></p> <p><b>Mean Time To Notify CLEC Of Network Outages</b></p> <p><b>Avg Speed To Answer – Toll</b></p> <p><b>% Answered with “X” Seconds-</b></p> <p><b>Trunk Group Performance</b></p> <p><b>Collocation-Avg Response Time</b></p> <p><b>Collocation-Avg Arrangement Time</b></p> <p><b>Avg Collocation % of Due Dates Missed</b></p> <p><b>Average Database Update Interval</b></p> <p><b>% Database Update Accuracy</b></p> <p><b>% NXXs &amp; LRNs Loaded by LERG Effective Date</b></p> <p><b>E911 Timeliness</b></p> <p><b>E911 Accuracy</b></p> <p><b>E911 Mean Interval</b></p>
--	---	---

	Change Mgmt Notice Average Delay Days Timeliness of Documents Associated With Change Change Management Documentation Average Delay Days Notification of CLEC Interface Outages % of BFR/NBR Requests Processed Within 30 Business Days % of Quotes Provided For Authorized BRF/NBR Requests Processed Within X(10/30/60) Business Days	
--	---	--

One of the key areas of difference between the Georgia Plan and Tennessee Plan is the disaggregation in the remedy plan. The level of disaggregation in Tennessee for measuring performance is the same as the level of disaggregation used for determining compliance. The Tennessee-ordered disaggregation for the remedy plan should not require an inordinate amount of effort to implement given that the disaggregation ordered in Tennessee closely mirrors what was ordered and is currently in place in Florida.<sup>7</sup>

Contrary to what BellSouth argues, the Tennessee plan is not “radically” different from the Georgia plan. As shown in the matrix, there are far more similarities than differences between the two plans. Additionally, much of the development work previously required to implement both the Georgia and Florida plans could be reused to facilitate an expeditious implementation of the Tennessee Plan.

<sup>7</sup> The Florida Public Service Commission also ordered the same disaggregation for both performance measures and enforcement mechanisms. The Florida penalty plan is already in place. Additionally, the Florida PSC disaggregation, is very similar to the disaggregation ordered in TN.

**ISSUE II: The Georgia Performance Plan Has Been Adopted, Either On An Interim Basis Or For A Longer Timeframe, By The Respective Commissions in Kentucky, North Carolina, South Carolina, Mississippi and Alabama.**

Different states have taken different approaches to performance measures and enforcement penalties. Tennessee, North Carolina, and Florida have each opened dockets to develop state- specific, comprehensive performance measure plans. BellSouth is correct in stating that the Georgia Plan has been adopted on an interim basis in North Carolina. However, BellSouth fails to explain that the Georgia Plan remains the interim plan because BellSouth did not meet the North Carolina Commission's ordered date for implementation of a North Carolina, state- specific plan. Additionally, BellSouth fails to mention that one of the main features that differentiates the North Carolina Plan from the Georgia Plan is that North Carolina has mirrored Tennessee with respect to remedy plan disaggregation. Both North Carolina and Tennessee support the same levels of disaggregation levels for both reporting and for penalties.

**ISSUE III: Tennessee Is The Only State In Bellsouth's Region in which A Plan Was Formulated, First, By Considering The Measures Advocated By A Single CLEC(DeltaCom), Adding To That Measures From A State Outside BellSouth's Region, Then Using the Result As The Basis To Develop A Generically-Applicable Plan. Perhaps As A Result Of This Unusual Course Of Development, The Tennessee Plan Differs Radically From The State-Approved Plans From Around The Country That Have Been Utilized By The FCC For 271 Purposes, And Is Different As Well From All Other Plans Ordered By State Commissions In BellSouth's Region.**

Contrary to BellSouth's claims, there was not some "unusual course of development" of the Tennessee Plan. The Tennessee Plan has been formulated based on input from the industry, including the CLECs, BellSouth, and the TRA itself. First, this docket started when the TRA asked the industry to comment on the performance measurements, benchmarks and enforcement mechanisms ordered in the BellSouth/DeltaCom Arbitration.

Less than a month of establishing this docket, the TRA issued a Notice requesting comments from all parties on the following issue:

“1. Should the performance measurements, benchmarks and enforcement mechanisms as adopted [in the DeltaCom case] be revised? If so, specify what changes should be made and provide supporting rationale.”

The CLEC Coalition, including AT&T, ACCESS Integrated Networks, Inc., the Association of Communications Enterprises, Birch Telecom of the South, Brooks Fiber Communications of Tennessee, DIECA Communications d/b/a COVAD Communications Company, ICG Communication, Inc., MCI metro Access Transmission Services, LLC, Mpower Communications Corporation, Time Warner Telecom of the Mid-South, L.P and XO Tennessee, Inc., responded and recommended additional measures, modified disaggregation, modified performance standards, and minor changes to the enforcement mechanism.

The TRA's final order in this docket required many measures that were not ordered in the DeltaCom arbitration.<sup>8</sup> Therefore, the TRA considered input from all participating CLECs in developing the Tennessee Plan.

Second, the plan that was adopted in the DeltaCom arbitration was based on measurements from the Texas Plan and the BellSouth 1999 SQMs (service quality measures). Contrary to BellSouth's portrayal, Tennessee initially considered measures from BellSouth SQMs in the same way that Florida, North Carolina, and Louisiana did in their generic dockets to develop performance measures.

---

<sup>8</sup> Examples of measures, not originating from the BellSouth/ITC^DeltaCom Arbitration include Recurring Charge Completeness, Non-Recurring Charge Completeness, % Daily Usage Feed Errors Corrected in X Business Days, % Billing Errors Corrected in X Days.

Third, BellSouth has given an inappropriate impression about the composition of the Tennessee Plan. Although there had originally been approximately 26 measures from the Texas Plan adopted in the DeltaCom arbitration order, the current Tennessee Plan only includes one measure that was unique to the Texas Plan, specifically, TN-P-20: Percentage of Time the Old Service Provider Releases the Subscription Prior To the Expiration of the Second 9-Hour Timer.

Fourth, the remedy plan recommended by DeltaCom and later ordered by the TRA in the DeltaCom arbitration was basically a mirror-image of the Performance Incentive Plan#(PIP) that CLEC Coalitions had previously proposed in other states in the BellSouth region.

**ISSUE IV: The Tennessee Plan Reflects An Approach To Penalties That Is Also Radically Different From The Georgia Plan. The Georgia Plan Applies Penalties Only To Key, Customer Affecting Measurements. The Tennessee Plan, In Contrast, Applies A Penalty To Almost Every Disaggregated Submeasure In The plan.**

In making its claim that the Tennessee Plan applies penalties to measures that are not "customer affecting," BellSouth has unilaterally determined which measures are "customer affecting." However, the CLECs have never concurred with BellSouth's list. The CLECs believe "customer affecting" measures are not limited to the set of enforcement measures adopted in the Georgia Plan. As an example, the CLECs believe that delaying the implementation of a customer order and untimely notice of delays in fulfilling a customer service request are "customer affecting." Many other measures show the added burdens CLECs face in entering a market and, thus, are "customer affecting" because they impede the ability of consumers to have a choice. Even under the most conservative definition of customer affecting, where only activities that affect the customer's service or convenience

would be covered, BST's plan tries to eliminate remedy coverage. Measures, such as Average Held Order Interval and Percent Orders Given Jeopardy Notice Interval should clearly be designated as enforcement measures. The Tennessee Plan appropriately applies penalties to customer-affecting measurements.

The difference in those submeasures, which are subject to remedies between the Georgia Plan and Tennessee Plan is largely due to the difference in the disaggregation for enforcement measures. Like the Florida Plan, which has approximately 830 Tier 1 submeasures and 799 Tier II submeasures, and the North Carolina Plan, the Tennessee plan was designed to curtail any masking of discrimination caused by lumping unlike services together in performance determinations.

**ISSUE V: The Georgia Plan Has Been In Development For A Number Of Years, Has Been Adopted By Most States In BellSouth's Region, And Has Been Specifically Approved By The FCC As sufficient For The Purposes Of 271 Consideration.**

BellSouth relies heavily on the fact that the FCC has approved BellSouth's 271 application for Georgia to suggest that the Authority should adopt the Georgia plan. The TRA, however, has already considered this issue. The TRA has stated it "adopted a comprehensive set of measures intended to capture relevant data to accurately measure the level of service BellSouth provides to CLECs in Tennessee." June 28 Order at 34. The TRA has established the various benchmarks or analogs for a multitude of unbundled network elements. These benchmarks "represent levels of service that BellSouth must achieve in order to meet the requirement of nondiscriminatory access." June 28 Order at 41. Without reviewing data that is consistent with what the TRA deems appropriate for Tennessee, the TRA and CLECs will be unable to determine whether BellSouth has met the performance



standards set by this Authority that will provide an efficient competitor a meaningful opportunity to compete in Tennessee.

The Authority's findings are consistent with FCC precedent. The FCC has recognized that "metric definitions and incumbent LEC operating systems will likely vary among states, and that individual states may set standards at a particular level that would not apply in other states and that may constitute more or less than [the federal Telecommunications Act] requires. Therefore, in evaluating compliance [with the Act] in each [state] application, we consider the BOC's performance within the context of each respective state. For example, where a state develops a performance benchmark with input from affected competitors and the BOC, such a standard may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete. . . .[I]n making our evaluation we will examine whether the state commission has adopted a retail analogue or a benchmark to measure BOC performance and then review the particular level of performance the state has required."<sup>9</sup>

Thus, consistent with FCC guidance, the TRA should make its decision based upon the performance measures and standards it has ordered BellSouth to implement in Tennessee and not on results of a test developed for other states. The fact that the FCC found the Georgia plan acceptable for Georgia does not suggest that the same plan is appropriate or acceptable in Tennessee.

---

<sup>9</sup> Memorandum Opinion and Order, In the Matter of Application by SBC Communications, Inc., et al. pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region InterLATA Services in Texas, 15 FCC Rcd. 18,334, paragraph 55-56 (FCC, June 30, 2000) (No. CC 00-65, FCC 00-238).

**ISSUE VI: Adopting The Georgia Plan Will Allow For An Immediate Step Toward Assuring That The Conditions Have Been Met For BellSouth's Entry Into The Long Distance Market.**

The FCC's recent Georgia and Louisiana 271 orders noted that state regulators were overseeing the metric and remedy plans and, in fact, were in the process of six-month reviews to ensure that the metrics were providing adequate protection for CLECs. This appears to indicate that the FCC gave approval not necessarily to a specific plan but to a process whereby the state commissions will fine tune and adjust such plans as appropriate. The TRA has just completed such a process and should not be swayed by BellSouth's claims that this plan does not fit some imaginary formula. The Georgia plan (which may be subject to change after the current six month review) does not fit the market conditions of every BellSouth state.

**ISSUE VII: The Ordering Of This Plan By the Former Directors Ensures That There Will Be No Measurement Plan In Place, And No Penalties Paid Pursuant To A Plan, For A Period Of At Least Six Months.**

BellSouth's claims regarding the timing of implementation of the Tennessee Plan are curious, given that it controls when the plan will be implemented. As opposed to the interval seemingly necessary for measure modifications, BellSouth is the primary contributor to extending the dates for complete implementation of the Tennessee Plan. BellSouth's consistent and repetitive set of Motions has already caused more than a 60 day delay.

Moreover, six months will not be required to begin implementation of the Tennessee Plan. First, BellSouth has stated that 17 measures can be implemented in the ten-day period contained in the Authority's Second Order. Second, many of the measures, only requiring disaggregation changes, should not require the full six months allotted by the TRA. BellSouth has done much of the development required for the Provisioning and Maintenance

& Repair (M&R) measures in implementing the Florida Plan. Reuse of existing code should significantly reduce time necessary for disaggregation modifications.

**ISSUE VIII: Since the FCC has approved the Georgia Plan, Tennessee should simply adopt the same plan.**

BellSouth's position in this case boils down to a rhetorical question. In its Motion (at page 8), the company asks, "[W]hat could be the possible benefit to creating a unique plan for Tennessee when a Georgia plan exists that has already been deemed by the FCC as appropriate to serve all purposes for which the plan is intended [?]"

The Georgia Plan may be satisfactory for that state but the TRA's more comprehensive plan is better for Tennessee. The benefits are clear. The TRA Plan will provide greater benefits for competition and greater benefits for customers.

The FCC has approved performance measures and enforcement plans from a number of states. The approved plans range from Georgia, with its limited number of enforcement measures, to the Texas plan, which was used as a starting point by the TRA. Thus, the FCC has indicated that it will rely principally on each state commission to decide what type of performance measures and enforcement plan is best for that state. One commission may be satisfied with doing only the minimum needed to obtain FCC approval; other commissions have decided to be more aggressive in promoting competition and the interests of consumers who will benefit from that competition.

The TRA, along with the state commissions in Florida and North Carolina, has concluded that a more comprehensive plan is needed to measure whether BellSouth is providing non-discriminatory access to its network and to ensure these are adequate enforcement mechanisms to deter BellSouth from discriminatory conduct.

The TRA arrived at these conclusions over a period of two years and after careful examination of plans in other states and Tennessee-specific problems that needed to be addressed. The agency's decisions, contained in a thirty-four page order issued May 14, 2002, and a fifty-one page order issued June 28, 2002, are amply supported by detailed findings of fact and conclusions of law. No one could read those orders and not appreciate the work and the level of expertise reflected in them.

BellSouth has now begun the process of implementation of the Tennessee Plan, a process which will be complete within less than six months. After that, there will undoubtedly be adjustments and improvements made in the Plan based on actual experience. The end result will be (and already is) one of the best, most pro-competitive and pro-consumer plans in the nation, a point of pride for this agency and its staff.

Using rhetoric and threats of further litigation, BellSouth hopes that the reorganized Authority will now undo, in one vote, all of what the agency has accomplished in this docket and choose simply to tag along with those who have decided to do only the minimum necessary to pass FCC approval. The TRA must not let that happen.

### CONCLUSION

BellSouth's Motion to Reconsider is procedurally defective, substantively insufficient, and factually misleading and inaccurate. Moreover, the consistent description of the Authority's prior decisions as actions of "former Directors," rather than as rulings of the agency,<sup>10</sup> appears to be an effort to turn this Motion into a personal attack on former Directors

---

<sup>10</sup> This docket and its predecessor, the DeltaCom arbitration, have been before the agency since 1999. Until the FCC's recent decision regarding the Georgia plan, nearly all the important issues in this docket were resolved unanimously by the Authority.


Greer and Malone. Such efforts are inappropriate. The Authority has made its decision on BellSouth's claims, and although BellSouth may not agree with that decision, it is time to get on with the implementation of the Authority's Order.

For these reasons, the Motion for Reconsideration should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
Henry Walker  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via facsimile or hand delivery, to the following on this the 19<sup>th</sup> day of July, 2002.

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce St.  
Suite 2101  
Nashville, TN 37201-3300


Sylvia Anderson, Esq.  
AT&T Communications of the South Central States  
Room 8068  
1200 Peachtree St., NE  
Atlanta, GA 30309

Tim Phillips, Esq.  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202

Jon E. Hastings, Esq.  
Boult, Cummings, Connors and Berry PLC  
P.O. Box 198062  
414 Union Street Suite 1600  
Nashville, TN 37219

Charles B. Welch, Esq.  
Farris, Mathews, et al.  
618 Church Street, #303  
Nashville, TN 37219

Dana Shaffer, Esq.  
XO Tennessee, Inc.  
105 Molloy St.  
Nashville, TN 37201

  
Henry Walker